

# HOUSE of LORDS.

ANN SALTER, Spinster, Appellant.

FRANCIS HITE, *an Attorney at Law*, EDWARD RAMSEY and JANE his Wife, (late JANE BYRDALL, Widow) MARY SALTER, JOHN PARTRIDGE the Elder, JOHN PARTRIDGE the Younger, and SAMUEL MARE, Respondents.

## The APPELLANT'S CASE.

Description of the Appellant.  
Michael Salter Alshe died Aug. 14, 1767.

THE said Ann Salter the Appellant is the only Sister and Heiress at Law of *Michael Salter Alshe*, late of *Crediton* in *Devon*, deceased, who died of a Fever on the 14th August, 1767, after an Illness of about eight Days, without Issue, and at such the Time of his Death was seized in Fee Simple of Lands in *Heavitree* and *Sowton* in the County of *Devon*, of about the yearly Value of 350*l.* and possessed of some personal Estate, which consisted chiefly of some Household Goods and Furniture, and some Arrears of Rent.

The Appellant and her Brother, the said *Michael Salter Alshe*, lived together from their Infancy, and she resided with him and his Wife after their Marriage, and home to the Time of his Death, and he always entertained and expressed great Esteem and Affection for her.

Concealment of the pretended Will of Michael Salter Alshe.

The Appellant, upon the Death of her Brother, conceived that she, as his Heiress at Law, became intitled to all his real Estate, (subject to his Widow's Dower) and to a Moiety of his personal Estate, and accordingly entered upon the said real Estate; and she and the Widow possessed themselves of his personal Estate, confiding that he had died intestate; the Appellant not knowing or having heard that he had made any Will, nor did she ever hear that it was pretended he had made a Will, until about the latter End of *October* in the said Year 1767, when the Appellant was sent for to the House of the Respondent *Hite*, the Father of the said Respondent *Jane Ramsey*, at which Time there was produced to the Appellant a Parcel, wrapped up in Paper, sealed up, on which Paper were wrote these Words, "Not to be opened till Three Months after the Death of Mr. Salter Alshe." However, although Three Months were not elapsed since his Death, she consented to its being opened; and the said Cover was found to contain a Parchment Writing, purporting to be the Will of the said *Michael Salter Alshe*, dated the 31st of *July*, 1766, and attested by three Witnesses, namely, *Matthew Andrew Paul*, *Elizabeth Caunter*, and *Josias Salter*.

Some Account of the pretended Will.  
The Hand Writing not known.

The pretended Will is wrote with a Hand which nobody knows, and although the strictest Enquiry hath been made for the Writer thereof, yet he cannot be discovered; and it appears to be the Hand Writing of an old Person, and the Spelling is not modern.

Indorsement on the Cover.

The Indorsement on the Cover appears to be of the same Hand Writing with the pretended Will; and though it is thereby directed "not to be opened till Three Months after the Death of Mr. Salter Alshe," yet the first Clause in the Will, after the Preamble, directs where the Testator would be buried, in these Words, "First I will, that my Body be decently interred near my Relations in *Crediton*."

Abstract of the pretended Will.

The Executors in Trust, *John Partridge* the elder, and *John Partridge* the younger, are directed; "within the Space of Six Months, and with all convenient Speed after his Death, to sell and dispose of all the Goods of the said *Michael Salter Alshe*, and call in his Debts, and to apply the Monies arising thereby in Payment of Debts, Legacies, and Funeral Expences."

An Annuity of 80*l.* is given to the Widow for her Life, and the Testator is made to declare it to be "a sufficient Maintenance for her; and more so, in that he had no Portion or Fortune with her."

The Household Goods and Furniture are given equally between his Wife and his Sister the Appellant, provided the Wife released her Dower; but, in Case of her Refusal, this Legacy is revoked.

Annuities for Life are given to the following Persons (videlicet) "to *William Salter*, (the Cousin of the said *Michael Salter Alshe*), since deceased, 50*l.*; to his Cousin *Margaret Salter*, 20*l.*; and to *Mary* the Daughter of the said *William Salter* 20*l.* to commence "from the Death of her Father."

A Legacy of 350*l.* over and above the Monies he had received of the supposed Testator, is given to the Respondent *Hite*, accompanied with Expressions of the Testator's great Friendship and Regard for him.

To each of these, who have no Child, is given an Estate for Life, with a Limitation to their Heirs, Male and Female. But *William Salter* having a Daughter, there the Limitation is only to the Heirs Male of his Body.

All the Lands of the said *Michael Salter Alshe* are devised (subject to a Term of 200 Years, created in some Part thereof for the Purpose of raising Money to discharge his Debts, Legacies, and Funeral Expences) to Trustees, *John Partridge* the elder, and *Samuel Mare*, and their Heirs, during the Life of the Appellant, upon Trust to support the contingent Remainders, but to permit her to receive the Profits during her Life; Remainder to her first and other Sons in Tail General; Remainder to her Daughter and Daughters in Tail General as Tenants in Common; Remainder to *William Salter*, since deceased, for his Life; Remainder to his first and other Sons in Tail General; Remainder to *Hannah Salter Alshe* (then the Wife and now the Widow of the said *Michael Salter Alshe*) for her Life, with the like Remainder in Tail to her Issue Male and Female; as the same is limited to the Appellant; Remainder to *Margaret Salter* for her Life, with the like Remainder in Tail to her Issue Male and Female, as the same is before limited to the Appellant; Remainder to the Respondent *Jane Byrdall*, (now *Ramsay*), who was no wife related to the said *Michael Salter Alshe*, and the Heirs of her Body; with Remainder in Fee to the said *Jane Byrdall* (now *Ramsay*) and her Heirs.

Observation on the Attestation of the pretended Will.

The Persons whose Names are subscribed as Witnesses to the said pretended Will, were all dead before the said *Michael Salter Alshe*, although he lived but a little more than a Year after the Date thereof. *Matthew Andrew Paul*, one of such Persons, was an Attorney of good Reputation, and lived at *Exeter*, about 8 Miles from *Crediton*; *Elizabeth Caunter*, another of them, was a single Woman, and lived at *Crediton*, where she boarded with one Mr. *Brake*; and *Josias Salter*, the other of them, had lived with the said

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Respondent



Respondent *Hite*, in the Capacity of a Writing Servant, for many Years; but being incapable of serving *Hite* in that Capacity, from his ill State of Health, he lived with and was maintained by the said Testator and Mrs. *Ashe*, his Sister, at the Time the pretended Will is supposed to have been executed.

July 13, 1768, Bill filed for the Establishment of the pretended Will, and examining the Witnesses, tho' all dead before the pretended Testator.

On the 13th January 1768, the said Respondent *Hite*, as a Legatee and Simple-Contract Creditor of the said *Michael Salter Ashe* (on Behalf of himself and other the Legatees and Creditors of the said *Michael Salter Ashe*) and the Respondent *Jane Ramsey* (then *Jane Byrdall*) who claimed to be a Devisee in Remainder of the Lands of the said *Michael Salter Ashe* after his Debts and Legacies were paid, and the Trusts of his Will performed, filed their Bill in the High Court of Chancery against the Appellant, and also against *Hannah Salter Ashe*, the Testator's Widow, *Margaret Salter*, Testator's Cousin, and against *William Salter*, since deceased, and the Respondents *Mary Salter*, *John Partridge* the elder, *John Partridge* the younger, and *Samuel Mare*, stating therein such pretended Will, the Legacy thereby given to the said Respondent *Hite*, and the Devise of the real Estate of the said *Michael Salter Ashe*, in such Manner as hereinbefore stated; and thereby praying (amongst other Things) that the said several Witnesses to the said Will might be examined as to the Execution thereof, and their Testimony preserved, and that the several Trusts of the said Will might be performed and carried into Execution.

All the Defendants answered the said Bill; and the Appellant in her Answer insisted, that the said *Michael Salter Ashe* died intestate; and that all his Lands descended to her as his Heiress at Law, subject to the Dower of his Widow.

April 18, 1768, Cross Bill filed for setting aside the pretended Will.

The Appellant on the 18th April 1768, filed her Cross Bill against all the Persons before named, insisting therein that the Will pretended to be made by the said *Michael Salter Ashe* was not his Will, and that he really died intestate, and that all his Lands therefore descended to the Appellant as his Heiress at Law; and therefore praying, that an Issue might be directed to try the Validity of the said pretended Will.

The several Defendants answered the said Bill; and, Issue being joined, divers Witnesses were examined in both the said Causes.

July 9, 1770, Causes were heard and Issue directed, *Deviseavit vel non*.

On the 9th July 1770 both these Causes came on to be heard before the Master of the Rolls, when his Honour ordered that the said Parties should proceed to a Trial at Law at the then next Assizes to be holden for the County of Devon, on the following Issue, "*Deviseavit vel non*," and that *Jane Byrdall* should be Plaintiff at Law, and the Appellant was to be Defendant.

Hilary 1771 Special Jury granted.

In Hilary Term 1771 such Issue was delivered, and a special Jury was struck upon the Application of the Appellant, and the Cause was intended to be tried before such Special Jury.

1771 Lent Assizes, at Exeter, Issue was tried, three Special Jurymen only sworn. Verdict for the Will.

And at the Lent Assizes for the County of Devon, in the Year 1771, the Cause came on to be tried before Mr. Justice Blackstone early in the Morning, when three only of the Special Jury were sworn, and the rest of the Jury were made up of Taleymen, who found a Verdict for the Will.

New Trial refused by the Lord Chancellor.

The Appellant being dissatisfied with the Verdict, applied by Motion to the Lord Chancellor for a new Trial, which his Lordship was pleased to refuse.

Appellant appealed to the House of Lords, who directed another Trial, in which the Respondents were to be Plaintiffs, and the Appellant, Defendant.

The Appellant thinking herself aggrieved by such Order, appealed therefrom to this House; and on hearing the Appeal 1st of March 1773, your Lordships were pleased to order, that the Order complained of in the said Appeal should be affirmed, with the following Addition (videlicet) "*That the Parties should proceed to another Trial at the then next Assizes for the County of Devon, upon the same Issue. And it was further ordered, that the Respondents should be Plaintiffs at Law, and the Appellant, Defendant. And it was further ordered, that the Appellant should pay the Respondents the Costs of the former Trial, and that the Court of Chancery should give all necessary and proper Directions for carrying the said Judgment into Execution.*" And on the 10th of March 1773, the Judgment of this House was made an Order of the Court of Chancery.

Issue as directed by the House of Lords, altered by Order of the Lord Chancellor.

The Appellant refusing to accept a Declaration, unless all the Respondents were Plaintiffs at Law, pursuant to the said Judgment of this House, the Respondents *Francis Hite*, and *Edward Ramsey* and *Jane* his Wife, applied by Motion to the Lord High Chancellor on the 28th Day of May, 1773, that the Appellant's Attorney might accept a Declaration to try the said Issue, wherein the Respondents, *Edward Ramsey* and *Jane* his Wife, were the only Plaintiffs; and on hearing this Motion the Lord High Chancellor was pleased to order accordingly; and in obedience to this order the Appellant accepted such Declaration, and pleaded thereto, although she was by that means prevented from giving material Evidence in respect of the Declarations of the Respondent *Hite*, which would have greatly strengthened the Appellant's Case, and tended to throw considerable Light on the whole of this Transaction.

Trinity Term 1773, Special Jury struck.

In Trinity Term 1773, the Issue was delivered, and a Special Jury struck on the Application of the Appellant.

1773, Summer Assizes at Exeter Cause tried a second Time, before a full Special Jury. Verdict for the Appellant, against the Will.

And at the Summer Assizes for Devon 1773, the Cause came on to be tried before Mr. Baron Adams, and a full Special Jury of the most respectable Gentlemen of the said County; who, after a Hearing of near 18 Hours, found a Verdict for the Appellant, against the Will, upon the Evidence following.

## The RESPONDENTS Proofs.

History of the pretended Will, as given by the Respondents.

It being admitted that the Appellant was Heir at Law to the Deceased, the Counsel for the Respondents insisted, and called Witnesses to prove, that the Will in Question was prepared and attested by the said *Paull*, and was executed at the House of one *John Vicars*, who then kept the *Turk's Head Inn* at Exeter, and was afterwards delivered to *Susannah Franks*, the Housekeeper of *Francis Hite*, by the supposed Testator himself, with Directions, in case of his Death, to deliver the same into the Hands of *John Partridge*; and that accordingly the said *Susannah Franks*, in the latter End of the Month of August, wherein the said *Michael Salter Ashe* died, or about the Beginning of the next Month, delivered the said pretended Will to *John Partridge*, from whom the said *Francis Hite* received it. The Respondents then attempted to prove the Execution of the Will, and in order to mark the Time so strongly, that it was impossible for the Witnesses to be mistaken in this Particular, they attempted to prove, that it was executed on one of the Days whereon a great Fair, called *Lammas Fair*, was held in the City of Exeter, in the Year 1766, which began on Tuesday the 5th, and ended on Thursday the 7th Day of August. By these Circumstances all the Witnesses affect to ascertain the Date of this Transaction. And *John Melhuish*, by a Circumstance mentioned in his Evidence, fixed it to be on the eighth Day of August.

Evidence of the Resemblance of the Testator's and the attesting Witnesses Hand Writing.

*George Coryndon*, *Samuel Sweeting*, and *John Geare*, Gentlemen, and *Richard Wootton* Writer, deposed to their Knowledge of Mr. *Paull*, and of his Hand Writing; that they believed the Name of *Paull*, indorsed on the Will, from Similitude, to be his Writing. *Sweeting* deposed, that *Paull* was a Man of Accuracy and Precision in Business; and *Coryndon* and *Wootton*, in their Cross Examination, said he was an exact Man, and that they apprehended *Paull* would, if he had observed the Interlineation, have taken Notice of it in the Attestation; and all of them deposed to their Belief, that the Will, Interlineation, and Indorsement on the Cover, were of the same Hand Writing; that it was not *Paull's*; that they were well acquainted with the Hands Writing of the Attornies and Writers in Exeter; but that they knew not, nor had ever seen, the Hand Writing of the Will. *Wootton* deposed that he frequently wrote for *Paull*, and that the Spelling in the Will was not *Paull's* Manner of spelling, for that he spelt in the modern Fashion.

Several others were called, and proved, by Similitude, the Hands Writing of the Testator, and of *Josias Salter* and *Elizabeth Caunter*, the other two Persons whose Names are set as Witnesses to the pretended Will.

Respondents Proof of the Execution of the pretended Will.

*John Vicars*, *Mary* his Wife, *Margaret Caser* their Servant, and said *John Melhuish*, Writing Clerk of the said *Francis Hite*, deposed, that on the 6th or 7th Days of August 1766, being *Lammas Fair Days*, the said *Michael Salter Ashe*, *Josias Salter*, *Matthew Andrew Paull*, and *Elizabeth Caunter*, were at the House of the said *Vicars*, at the *Turk's Head Inn* at Exeter.

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Evidence of John Vicars the Landlord at the Turk's Head, who hath since destroyed himself.

The said John Vicars (who being since accused of having committed the Crime of Forgery hath destroyed himself) particularly deposed, that Michael Salter Afshe the Testator, and Josias Salter came to his House together about 11 or 12 o'Clock in the Forenoon, asked for a Room, and went away; came again in the Afternoon about 2 or 3 o'Clock with Mr. Paull, and Witnefs shewed them into the Dining Room, took out a Table for them to do Business on, and saw Paull take a Paper Parcel out of his Pocket, out of which he took a Parchment, and threw it on the Table; then Witnefs went down Stairs, and met Elizabeth Caunter, who, after being informed that Michael Salter Afshe, and Josias were above Stairs, went into the Dining Room. That in a few Minutes afterwards the Bell rang, and he went up, and on opening the Door heard Paull reading a Parchment, which, from some Words that he heard, he understood to be a Will, but could not remember the Words; and afterwards, going into the Room again, saw Paull writing on the Parchment; then went down Stairs, and being called up again, was ordered to bring a Candle, which he carried up lighted, and left it. Mr. Paull soon after went away, and Mrs. Caunter followed him; that Witnefs then went up and drank Negus with the supposed Testator and Josias Salter; that the Parcel was then on the Table. Josias said, "Here is the Thing which I have been so long uneasy about and wishing to have done. There is Doctor Salter's Will: now every thing is settled to my Mind, I shall die contented." Michael Salter Afshe then expressed himself to Josias, who was his Wife's Brother, as follows, "Now I've made my Will, I don't know what I shall do with it. I dare not carry it home; my Wife will be so uneasy, she will kill me." To which Josias replied, "You know you have Friends enough that will keep it for you; there is Mr. Partridge, my Master Mr. Hite, or Mr. Mare, where it will be as safe as in your own Custody." That it was inclosed in a White Cover, sealed with a large broad Seal; then Josias took it up, and they went away, and they were in the House in the whole about One Hour and Half; that no other Persons were in the Room, besides the supposed Testator and the three Witnefs, and they desired the Witnefs not to admit any other Person.

Evidence of Mary Vicars.

Mary Vicars the Wife of the last Witnefs deposed, that she saw Elizabeth Caunter at the Turk's Head in the Time of the said Lammas Fair; that she saw her go up Stairs to the Dining Room; and seeing her so up, asked Melhuish who she was, and was told by him, that it was Elizabeth Caunter—That on that Day, or the next, she asked her Husband what the Company in that Room had been doing; who told her, that he imagined they had been about Doctor Salter's Will.

Evidence of Margaret Cafer.

Margaret Cafer, a Servant, deposed, but very incorrectly as to the Time, and all other Circumstances, that Elizabeth Caunter was at the Turk's-Head during the same Fair.

Evidence of John Melhuish.

John Melhuish, Hite's Writer, deposed, that he saw, during the said Lammas Fair, the said Paull, Michael Salter Afshe, Josias Salter, and Elizabeth Caunter come down Stairs from a Room at the Turk's Head. That he asked Josias Salter what they had been about; who said, that they had been executing the Doctor's (meaning the said Michael Salter Afshe's) Will, and he fixed the Day on which this happened to be the 8th Day of August by the Circumstance of his then having come to the Turk's Head, from a House in Southgate-Street, where he had been to settle a Cause, in which one Jasper had been arrested, and was then discharged—In this Cause the Warrant for arresting Jasper appeared to be granted the 7th, and by the positive Evidence of Philip Sarell, the Bailiff who made the Arrest, Jasper was discharged on the 8th.

Evidence of Mary Cookesley.

Mary Cookesley deposed, that she remembered her Sister-in-Law, said Elizabeth Caunter's, coming to her in August 1766, at Mr. Gibbs's in Exeter, where she then lived as a Servant, about One o'Clock; stayed a few Minutes; said she would return and drink Tea, and that she was then going to Mr. Paull's. Elizabeth Caunter afterwards returned in the Afternoon about Five o'Clock, and said she had been on Business about Doctor Salter's Will; drank two Glasses of Wine; was in a bad State of Health, pale and yellow, and her Face bloated; dressed in Mourning, walked very poorly, and said she came on a double Horse, but did not tell her who rode before her, nor where her Horse was, nor of her having been at the Turk's Head; that Gibbs's House was distant from Paull's about 400 Yards, and Paull's House from Vicars's House about 800 Yards, and it was the same Distance from Vicars's House to Gibbs's. N. B. This Witnefs on the former Trial did not recollect, nor has any other ever said, how Elizabeth Caunter was conveyed, or supposed to be conveyed to Exeter.

Evidence of Peter Cann.

Peter Cann, a Barber in Crediton, deposed, that the latter End of July 1765, Josias Salter and the Doctor (meaning the said Michael Salter Afshe) came together into his Shop, and that they first talked softly together in a Corner of his Shop; then Josias said aloud, "Doctor let us go to Exeter, Mr. Paull will be ready for us before we come." The Doctor went off; Josias tarried, and Witnefs asked him, "if the Doctor was going to settle his Will;" to which Josias answered, "The Doctor shall make a Will, for if he should die without a Will, what will Mrs. Ann (meaning the Appellant) do? The Family will be in Confusion, she is not qualified."

Evidence of Samuel Mare.

Samuel Mare (Serge-Weaver) deposed, that Josias Salter served Hite; that there was great Intimacy between Josias and the supposed Testator—that in June or July the Doctor came to Witnefs's House, and said he desired to speak with him, and told him that Josias was going to be tapped, and would not live long, and asked the Witnefs "if he would give him Leave to make Use of his Name as a Trustee in his Will with another Friend," to which he consented; and further deposed, that in about a Week, 10 Days, or a Fortnight afterwards, he met Mr. Afshe in the Street, who, addressing himself to Witnefs, said, "I've done that, now I am easy." That Witnefs apprehended he meant his Will; and the supposed Testator further added, "If I do not take Care of the Estate, they (meaning his Family) will spend it all." And this Witnefs, on his Cross Examination, said, that he told Hite of the Conversation between him and the supposed Testator, in a Day or two afterwards.

Evidence of Robert Stribling and Thomas Lee.

Robert Stribling, } These Witnefs deposed, that they had heard Doctor Salter made use of Expressions of Regard and Friend-  
Thomas Lee. } ship for Hite.

Evidence of Elizabeth Saunders.

Elizabeth Saunders deposed, that in the Year 1766 she was a Boarder at Mr. Brake's, in Crediton, where Mrs. Caunter also lived, and attended the Wine Cellar, and was a kind of Housekeeper, and was a little addicted to Drinking; that she was confined to her Bed about the 20th August, and was before that Time in an ill state of Health, but was not, as she believed, confined to the House; that she never saw her go on Horseback. And on her Cross Examination said, she was very little in Company with Elizabeth Caunter, did not mind a great deal about her, and being frequently out from Morning till Night, did not see Elizabeth Caunter for whole Days together, and therefore had no particular Recollection of her Illness before the 20th Day of August; and said that Elizabeth Hole waited on Mrs. Caunter, and she and the other Persons and Servants about her must know more of her than the Witnefs.

Evidence of Alice Morris, who was not produced upon the first Trial.

Alice Morris deposed, that Mrs. Caunter was at her House in Lammas Fair 1766, about 12 o'Clock; was much swelled, and very ill; said she had Business at the Turk's-Head, and bought 2 or 3 Pair of Stockings, and left them on the Stall, went away, and returned again soon after for them—that it was the Year after her Husband's Death, who died in 1765, and about a Month before Mrs. Caunter's Death; that she lived next Door to the Turk's-Head, but never heard of any Dispute about Doctor Salter's Will, or Mrs. Caunter's being at Exeter in Lammas-Fair 1766, till about 8 Weeks ago, when Vicars's Hostler, and Hite's Man, Melhuish, were standing on the Outside of her Shop, talking about Mrs. Caunter; and then Witnefs said, "she was there, and bought Goods of her," but there was no Entry in the Books of the Witnefs of any Goods sold to Elizabeth Caunter, nor could she mention any Circumstance, connected with her Transaction with Elizabeth Caunter, by which she could remember to have seen her at that particular Time; that Hite had been at her House within a Week, and had been there often within 4 Months.

Deposition of Susannah Franks, late a Housekeeper to the Respondent Hite, who died before the first Trial.

Susannah Franks, who was Hite's Housekeeper and died before the first Trial, said, in her Deposition upon the Commission, that Mr. Afshe, in August or September 1766, came to Mr. Hite's House, and he not being at Home, Mr. Afshe delivered her a Paper Parcel, containing (as he informed her) his Will, and desired her to take Care of it, and not let it come to his Wife's Knowledge, because, if it should, he should live a more uneasy Life with her than he did already; and desired her to keep the Parcel, and if he should die to deliver it to Mr. Partridge, the first Opportunity after his Death; that she took care of it, and Mr. Afshe dying in August 1767, she delivered it to Mr. Partridge, about the latter End of that Month of August.

Evidence of John Partridge senior.

John Partridge the elder deposed, that in August 1767, said Susannah Franks delivered him the Paper Parcel sealed up at Mr. Hite's House, with a Request not to open it till called for; and in a few Weeks after, he received a Letter from Mr. Hite desiring Witnefs to deliver it him, and thereupon he sent his Son with it to Hite, sealed up in the same Manner he received it.



Evidence of John Partridge Junior.

John Partridge Junior deposed, that he received the Parcel from his Father sealed up; and that he carried it to Mr. Hite at Crediton, where it was opened in the Presence of the Widow.

Former Verdict produced.

The Former Verdict for the Will was produced, and admitted.

## The APPELLANT'S Proofs.

Proof that Matthew Andrew Paull, did not prepare or attest the Will in Question.  
Evidence of William Webber, Mr. Paul's Clerk.

William Webber deposed, that he lived with Matthew Andrew Paull, whom the Respondents suppose to be the Drawer of the Will, for a Year and Half next before and home to his Death in April 1767, and wrote for him during all the Time; and that he verily believes that Paull did not prepare or cause to be prepared the Will then produced and shewn him; and assigns, as his Reasons for his Belief, that Paull used to impart to him all his Business; that he never communicated to him aught of the Will then produced, and was thoroughly convinced and persuaded that a Will of the Length with the Instrument then produced, could never have gone through Paull's Office without this Witness's Knowledge; and that since Paull's Death, he had made strict Search among his Papers, and could not find any Instructions, Draught, or other Traces of Mr. Ashe's Will; that Paull kept Instructions for, and Draughts of all Wills prepared by him, tied up in separate Bundles; that Paull himself and this Witness, generally transacted the Business, unless they were much pressed, and he used at such Times to employ Mr. Wootton, Mr. Bale, or Mr. Biggood (Writers in Exeter) to ingross Deeds and other Instruments. This Witness, on perusing the Instrument produced as the last Will and Testament of Michael Salter Ashe, declared that the Body of the Instrument was not of the Hand Writing of either of the said Writers employed by Paull, and that he did not know of whose Hand Writing it was, and never saw Writing like it; that Paull never spelt in the Manner the Will is spelt; that he had examined Mr. Paull's Books of Account of Business done, which in his Judgment were accurate; that Paull in his Cash Book entered all Monies received and paid, and kept a Book in which he made Memorandums of Business to be done; that he found in that Book an Entry by Mr. Paull, to attend a Survey for Mr. Holman at the Half Moon in Exeter, on the 7th of August; and then produced the Survey Terms, which were of the Witness's Hand Writing, and the Biddings were in Paull's Hand Writing; and that the Survey was held at 3 o'Clock in the Afternoon.

Mr. Paull's Books produced.

Paull's Books were then produced in Evidence, and confirmed the Evidence given by the Witnesses.

The Alibi of Josias Salter.

The Appellant then proceeded to prove the Alibi of Josias Salter.

Evidence of Philip Sarell.

Philip Sarell (a Bailiff) produces a Warrant from the Sheriff of Exeter, dated the 7th of August 1766, against one Jasper, at the Suit of the Respondent Hite; and deposed that he arrested Jasper the Day the Warrant bears Date, and that he continued under Arrest till the next Day, when he was discharged.

On the Part of the Appellant the strongest and most positive Evidence was given to prove the Impossibility of Josias Salter's being at the Turk's Head on the 7th or 8th of August 1766, whereon the Will is supposed to be Executed, being then in the last Stage of a Dropsy, and tapped on the 8th; and that he was in a Bed Room at the Barnstaple Inn, from 11 in the Morning of Thursday the 7th, till he was carried to Sowton on Saturday the 9th.

Evidence of Josias Rogers.

Josias Rogers, Gardener, deposed to his long and intimate Acquaintance for 30 Years with Josias Salter, Mr. Ashe, and Mrs. Ashe. That in August 1766, on Thursday in the Lammas Fair Week, soon after 12 o'Clock at Noon, he received a Message from them by his Wife to attend them at the Barnstaple Inn in Exeter. That he accordingly went there, and found them all together in a Lodging Room; that they told him they came that Morning from Crediton; that Witnesses dined and continued with them in the same Room from the Time he came till Night, and helped Josias Salter to Bed, who was so very weak and ill of a Dropsy that he could hardly go over the Room; and that Doctor Ashe, the supposed Testator, or his Wife, was not out of Witness's Sight a Quarter of an Hour, from the Time he came there to the Time of his going away at Night; that he saw Josias Salter the next Day, just after he had been tapped, as he believes, about 11 o'Clock in the Morning, tarried with him all that Day, and laid with him that Night, and the next Morning helped him into the Post Chaise which conveyed him to Sowton.

Evidence of Elizabeth Rogers.

Elizabeth, Wife of said Josias Rogers, deposed, that on the 7th August 1766, the Year in which Josias Salter died, she, about 11 o'Clock in the Morning, received a Message from Mr. Ashe, desiring her to come to the Barnstaple Inn to him; that she immediately went, and there found Mr. Ashe, and his Wife, and Josias Salter together; tarried with them about an Hour, and then went Home to send her Husband to them, at his Return from his Work, which was about Noon; that he immediately went, and tarried with them all that Day, as she believed; that Josias Salter was very much swelled, and so weak, that he could not without great Difficulty walk over the Room; that she went to them a Second Time that Afternoon, between 2 and 3 o'Clock, and found them and her Husband all together, and tarried with them about an Hour; and further deposed, that she was present the next Day, when Josias was tapped by Mr. Symons, and that she assisted in the Operation.

Evidence of John Symons the Surgeon.

John Symons, Surgeon, deposed, that on Friday Morning the 8th August 1766, he received a Message from Mr. Ashe, requesting his Attendance at the Barnstaple Inn, to tap Josias Salter for a Dropsy; that he went there, and found him in a Bed Room with Mr. and Mrs. Ashe, and he thinks said Elizabeth Rogers was there; and that he then tapped the said Josias, whose Constitution was much impaired; that he was very weak, full of Water, and could not walk far or well, and could not, in his Opinion, walk from thence to the Turk's Head.

Alibi of Elizabeth Caunter.

The strongest and most positive Evidence was given to prove Elizabeth Caunter from the 31st of July 1766, the Date of the Will, and in Fact from the 4th of July to her Death, which happened the 21st of September following, was never out of Crediton, which is distant from Exeter 8 Miles. It is incontestably proved that she laboured under a Dropsy and a Complication of Disorders, from the Middle of July, which increased on her until her Death. And if the Evidence of the Respondent's Witnesses deserve Credit, she was in Exeter from 12 o'Clock till Candle Light of Friday the 8th of August, and consequently must have set out from Crediton early in the Morning, and returned to Crediton late at Night, and rode 16 Miles on Horseback, and walked about a principal Part of the City of Exeter whilst she was there.

Evidence of Elizabeth Hole.

Elizabeth Hole, Servant at Mr. Brake's in Crediton in the Year 1766, deposed, that Mrs. Caunter was Housekeeper to Mr. Brake; and that the latter End of July, and particularly that Week in which the Lammas Fair was held at Exeter, Mrs. Caunter was extremely ill, and that on Monday the 4th of August, she asked Mrs. Caunter Leave to go to Lammas Fair; who said, "If I am so ill tomorrow as I am to-day, I shall not be able to let you go." That Witness said, "I will get Martha Buckingham in my Stead." To this Mrs. Caunter consented, and Martha Buckingham came there that Evening before the Witness left the House; that in the Evening, the Witness went to Exeter, and returned Home again the next Day, Tuesday, in the Evening, and found Mrs. Caunter at Home very ill; that she attended Elizabeth Caunter the Whole of the two following Days, Wednesday and Thursday, the 6th and 7th; that she did not go out of Doors, and on Thursday the 7th, she could not do any thing without Witness's Assistance; that she always attended her, and during the Whole of the Residue of that Week, was not absent from her half an Hour at any one Time.

Evidence of Martha Buckingham.

Martha Buckingham deposed, that she was hired to attend Miss Caunter in Lammas Fair Week, in the Room of Elizabeth Hole; that she was with her before Elizabeth Hole set out for the Fair, and was not absent from her at all till her Return on the Tuesday; and that she saw Miss Caunter every Day of that Week, Mornings and Evenings; and that she was so weak that she could not go the Length of the Court (meaning the Assize Hall) without sitting down.

Evidence of Ann Penrose.

Ann Penrose, who lived in the same House with Mrs. Caunter in the Year 1766, deposed, that in Lammas Fair Week Elizabeth Hole went to Exeter; that Witness was with Elizabeth Caunter the Whole of that Week; that she walked lame and feeble, had a Dropsy and Weakness of Breath; that every Person must observe it in her Walking; that she could not in her Opinion, have gone to Exeter, and could not go there without Witness's Knowledge; and that Elizabeth Hole, Charity Ford, Martha Buckingham and Elizabeth Damerell, were generally with her.

Evidence of Charity Ford.

Charity Ford deposed, that in the Year 1766, she was Apprentice to Mr. Brake in the Shop, and lived there 6 Years; that Elizabeth Caunter was not at Exeter after the 4th Day of July in the Year 1766; and that she fixed on that Day from her bringing Home



Have some Things for *Miss Brake*; and that she should have known if *Miss Caunter* had been after this Time absent for more than 3 or 4 Hours. That she was first taken ill about the 8th of *July*, and the last Time taken ill about the 21st of *August*, and from that Time confined to her Bed till her Death. That she was bled in the Beginning of *August* 1766, and the Whole of *Lammas Fair* Week was very ill, and confined to the House. That she was never absent from *Elizabeth Caunter* for more than an Hour or Two. That she remembered *Elizabeth Hole's* going to the *Lammas Fair* at *Exeter*, and *Martha Buckingham* supplying her Place; and further deposed, that *Mrs. Ashe* paid a Visit to *Miss Caunter* about a Month before her Death, and on her leaving the Room, *Miss Caunter* said, "I wish *Michael Salter* would make a Will, for the Sake of poor *Hannah*"—meaning his Wife. *Mrs. Damerell* (late *Lang*) said, "Do you not think there is a Will?" *Miss Caunter* said, "I am very certain there is no Will, and I wish he would make One for poor *Hannah's* Sake; if not, there will be the Duce of a Spudder."

Evidence of *Elizabeth Damerell*.

*Elizabeth Damerell* (late *Lang*) deposed, that in the Year 1766 she lived in *Crediton* with her Mother; that she was very intimate with *Miss Caunter*, who died the 21st of *September* in that Year; that from the 20th *July* she visited her every Day several Times, and was never absent from her more than 4 or 5 Hours in any one Day till her Death. That she could not have gone to *Exeter* without her Knowledge; that she was very ill and weak, and bled by her Apothecary *Mr. Hewgoe* the 2d of *August*; and that her Disorder after increased upon her, and she could not walk without holding by somewhat to support herself. And *Witness* deposed, she was frequently whole Days with her; and further deposed, that *Miss Caunter*, in her last Illness, when *Mrs. Ashe* had been to visit her, soon after *Mrs. Ashe's* quitting the Room, said, "I wish *Mr. Salter* would be persuaded to make a Will for the Sake of poor *Hannah*."—*Witness* asked her if he had not made a Will; to which she replied, "No, and I fear he never will; if so, there will be the Duce and all of a Spudder." And that the said *Charity Ford* and *Elizabeth Pain* were there.

Evidence of *Elizabeth Pain*.

*Elizabeth Pain* deposed, that *Mrs. Caunter* made the same Declaration to her in her last Illness, respecting *Mr. Salter's* not having made a Will, as the other two *Witnesses Ford* and *Damerell*; but said, that she did not remember that *Damerell* and *Ford* were present.

Evidence of *John Hewgoe* the Apothecary.

Said *John Hewgoe*, Apothecary, deposed, that in *July* and *August* 1766, *Elizabeth Caunter* was very infirm, feeble, and dropical; that he bled her in Bed on *Saturday* the 2d Day of *August*; that she kept her Room *Sunday* and *Monday* the 3d and 4th Days of *August*; and that the 5th Day of *August* she came down Stairs, but was so very weak, that she tottered as she walked over the Room. That he did not see her after for 3 or 4 Days. That he thought she could not travel on Horseback, but she might walk a little way in the Street, and not more than Half a Quarter of a Mile, and not even so far without great Difficulty, as she was extremely feeble. That he saw her in Bed the 22d of *August*; and that she was confined by Illness to her Bed till her Death on the 21st Day of *September*. This *Witness* refreshed his Memory by having Recourse to his Day Book.

That *Michael Salter Ashe* and his Wife, lived together in great Harmony.

Several of the *Witnesses* proved, that *Michael Salter Ashe* and his Wife lived together with great Harmony and Affection.

## Observations on the positive Testimony.

By the Evidence thus given on the Behalf of the Appellant, every Part of the Respondent's Story insisted upon in Support of the Will is contradicted.

It is shewn to be in the highest Degree improbable, or rather impossible, that the Will should have been drawn by *Mr. Paull*, or engrossed, or executed under his Directions. The Will is long and particular; a Draught of it must have been made, before it was copied for Execution. Neither his Papers or his Accounts discover any Trace of it. It is not copied by any Person ever employed by him, or known in the Country where he lived. His Clerk, whom he entrusted in all his Business, never heard of it.

The Execution of the Will at the Time fixed is disproved by the fullest and clearest Testimony.

*Josias Salter* is positively proved by the Evidence of *Josias Rogers* and his Wife, not to have moved from the *Barnstable Inn*, to which he came to be tapped for his Dropsy, either on the 7th or 8th of *August*; on the latter of which Days the supposed Execution of the Will is fixed by *John Melhuish*.

*Elizabeth Caunter* is proved, by various *Witnesses*, not to have been at *Exeter* during the Week in which the *Lammas Fair* was held. The Infirmities and Sickness under which she then laboured, enable the *Witnesses* to speak with the greatest Accuracy and Certainty.

If therefore the Cause was to be decided by the positive Testimony only given on each Side, without attending to the Circumstances of the Case, it is at least equally strong on the Part of the Appellant; and a Jury might very satisfactorily decide upon it, that the Will was not executed by the supposed Testator.

When, in Addition to this Testimony, the Circumstances are considered, they leave no Room to doubt that the Will is a Forgery.

## Observations on the Will and the Indorsement on its Cover.

The Indorsement on the Cover, by which it is directed that the pretended Will shall not be opened till three Months after the supposed Testator's Death, affords abundant Matter for Observation. It is not to be reconciled with the Expedition required by the supposed Testator for the Payment of his Debts, Legacies, and Funeral Expences. It is absolutely inconsistent with the Directions given for his Burial.

Supposing this to be the true and genuine Will of *Michael Salter Ashe*, no Reason can be assigned for making this Indorsement: Supposing it to be false and forged, it may be easily accounted for. It was necessary for the Framer of the Will to furnish some plausible Excuse for the Delay in not producing it immediately after the Decease of *Mr. Ashe*; and he was induced to insert the Clauses in the Will, which were inconsistent with the Indorsement on the Cover, in Order to give an Air of Probability to the Will itself. This Diversity of Intention naturally produced the Inconsistency which evidences the Fraud. It cannot be presumed that *Mr. Ashe* directed the Indorsement to be made on the Cover at the same Moment that he gave Instructions for a Will so utterly inconsistent with such Indorsement; nor is it less absurd, nor less inconsistent with the Course of Business, to suppose that *Paull* should direct the Person who engrossed the Will to indorse the Cover. It is admitted that the Engrosser of the Will was not present at the supposed Execution of it; and the Respondents affect to trace the Will from the *Turk's Head* into the Hands of the Respondent *Hite*, who produced it to *Hannah Salter Ashe*; and still the Respondents have not attempted to point out the Time when the Indorsement was made; neither is it pretended to have been written by any Person connected with the supposed Testator, or by *Mr. Paull*, who is by the Respondents supposed to have made the Will, or by any Person whose Hand Writing was ever before seen; though it is indisputably the same with the Hand Writing of the Will, which is very remarkable, and wrote by some old Person; and if *Paull* had prepared the Will some Traces of it would have been found in his Office, and known to his Clerk, and the Writer must have been discovered, if *Paull* had prepared it, or the Transaction been genuine. It is also very extraordinary that *Paull* should read over the Will, and immediately enclose it in a Cover with an Indorsement so very inconsistent with the Directions contained in the Will itself, and that the Testator and the other two *Witnesses* should none of them discover it; for, if *Vicars* be credited, they were all present at the Reading and Executing of the Will, and *Paull* himself sealed it.

A very



A very long Interlineation appears in the Will, of which no Notice is taken in the Attestation. This is very singular: it is still more so, when it is considered that the Will appears to be attested by *Mr. Paull*, an Attorney of great Accuracy, who would not have omitted to remark such an Interlineation.

The extreme Hardship and Severity with which the Widow of the supposed Testator is treated in this Will, is foreign to his known Character, and to the Current of his Affections. It was proved at the Trial that he lived with his Wife in the most perfect Harmony for a great number of Years, from his Marriage till his Death, and had experienced during that Time great Vicissitudes of Fortune, being sometimes involved in extreme Poverty, and at other Times in good Circumstances.

The Annuities are merely colourable, and inserted with a View of giving a plausible Appearance to the Will, and of preventing the Annuitants from countenancing the Appellant in disputing the Validity of the pretended Will.

The Intails in the Will are artfully drawn, so as to secure, at all Events, the Remainder in Fee to the Respondent *Jane Ramsey*; for, at the Death of *Mr. Ashe*, the Appellant *Ann Salter* was upwards of 46 Years of Age, and, to prevent even a Possibility of Issue to inherit, there is a very artful Clause inserted in the Will, that the Person marrying her should not have any Benefit from the Estates; the Trustees being directed, in that Event, to manage the Estates, receive the Profits, and pay them into her own Hands. The next in Remainder is *William Salter* (lately dead) who was a married Man, then aged 51 Years, and had Issue only one Daughter, aged 23 Years, who cannot take under the Will, the Limitation in Tail being only to his Sons.

The Wife of *William Salter*, being then upwards of 50 Years of Age, there was no Probability of her ever having any Heirs Male to inherit. If the Limitation to *William Salter* had not been carefully varied from the antecedent and subsequent Limitations, which extend to the Issue Female, an Estate Tail would have vested in the Daughter of *William Salter*, who, as soon as she came into Possession of the Premises, might have suffered a Recovery, and have barred the subsequent Limitations to the Respondent *Jane Ramsey*. The Widow of *Mr. Ashe* was then upwards of 51 Years of Age, and *Margaret Salter* was upwards of 56 Years of Age, and unmarried; so that the Remainder in Fee is well secured to the Respondent *Jane Ramsey*, there being scarce a Possibility that any antecedent Estate Tail will vest in the Issue of the former Devisees. The Interest of the Respondent *Jane Ramsey* at first View appears to be precarious and of small Value; but, on examining the probable Duration of the prior Limitations, the Expectancy is certain and of considerable present Value: Besides, it is unaccountable why *Mr. Ashe* should omit the Name of *Josias Salter* in the Limitation of the Estate, when he hath inserted all the others who stood in the same Relation to him.

It is not in Proof, that the supposed Testator had any Affection or Esteem whatsoever for the Respondent *Jane Ramsey*; but the Expressions of Kindness contained in the pretended Will, and the Proof adduced on the Part of the Respondents, are applied to the Affection and Esteem which it is contended that *Mr. Ashe* entertained for *Francis Hite*. The Daughter, who was utterly unknown to *Mr. Ashe*, is the apparent Object of his Bounty; though this Devise is not contended to have been made with an Intent to aggrandize the Family of the *Hites*, but merely to pay a Debt of Friendship. It must therefore remain to be the Subject of Conjecture, why the Name of the Respondent *Jane Ramsey*, rather than of the Respondent *Francis Hite*, should grace this Will as the Devisee of the real Estate. It must be admitted that *Francis Hite* shewed some Marks of Friendship, and offered some small Relief to *Mr. Ashe* in his Poverty and Distress; foreseeing probably the Event which happened, that the Estate in Question would soon fall to him by the Expiration of some antecedent Limitations. He was accordingly employed by *Mr. Ashe*, as his Attorney and Agent, on the Acquisition of his Fortune, to receive his Rents, and manage his Affairs. Anxious Care is taken in the pretended Will that *Hite* shall never be called to an Account for Monies received by him as Bailiff or Steward, to whatever Amount that might be, at the Time of the Testator's Decease.

The Death of the three attesting Witnesses in the Life of the supposed Testator, within a Year after the Execution of the pretended Will, is extraordinary. But it is still more extraordinary, and more unaccountable, that *Paull*, a sensible, judicious and accurate Attorney, much conversant in Business, should permit two Persons, then in a dying Condition, to attest the Will of a Man in good Health, and that for the Purpose they should be brought from *Crediton*, the Distance of 8 Miles, when in the populous City of *Exeter* Witnesses might have been had in Abundance to this Transaction.

If Secrecy from *Mrs. Ashe* was the Motive, the Time of Execution, as well as the Choice of Witnesses, was very extraordinary; for *Mrs. Ashe* comes with the Testator and her Brother to *Exeter*, and the Will is said to be attested by *Mrs. Caunter*, an intimate Friend, and *Josias Salter*, a Brother of *Mrs. Ashe*, the latter of whom must know he should be totally destitute of the Necessaries of Life if he survived *Mr. Ashe*; and the Choice was also the most unfortunate, because *Caunter* and *Josias Salter* are supposed studiously and anxiously to declare the Business in which they had been employed to every Person they happened to meet.

The Weakness and the Infirmities of both *Elizabeth Caunter* and *Josias Salter* at the Time fixed for the Execution of the Will were such, that it was absolutely impossible for either of them to have walked about the Streets of *Exeter* in the Manner described by the Respondents Witnesses; but it is probable some of them might see *Elizabeth Caunter* at *Exeter* on the 4th of July, which was certainly the last Time of her being there.

Some additional Testimony was adduced by both Parties at the last Trial, which merits some Observation. It was much insisted on by the Counsel for the Appellant at the former Trial, and at your Lordship's Bar, that it was impossible for *Elizabeth Caunter*, weak and infirm as she was, to be conveyed from *Crediton* to *Exeter* without a Carriage, and without a Companion; and that although *Michael Salter Ashe* died within a Year after the Date of the supposed Will, the Authenticity of which was immediately questioned, no Evidence had been given of any Carriage that was hired for that Purpose, or of the Person by whom she was attended, nor any Conjecture formed of the Manner in which she came.

*Mary Cooke*, a Witness examined at the former Trial, did at the last Trial, for the first Time, depose, that *Elizabeth Caunter* declared to her that she came to *Exeter* on Horseback; but who attended her, where the Horse was hired, or where it was put up at *Exeter*, is still a Secret, and must ever remain so, unless the Memory of this or of some other Witness, should hereafter be so much improved as to recollect these Circumstances. This Witness could give no Reason for her new additional Recollection, which had never occurred to her on her former Examinations at the first Trial; and upon the Commission from the Court of Chancery, two new Witnesses were examined on the Part of the Respondents, namely, *Elizabeth Saunders*, whose Evidence was too slight and insufficient to merit any Attention, when opposed to the clear and concurrent Testimony of the other Witnesses, who were the constant Companions of *Elizabeth Caunter* in her last Illness; and *Alice Morris*, whose Evidence is owing entirely, according to her own Account, to her overhearing, most providentially, a Conversation between *Hite's* Writer and the Hostler at the *Turk's Head*; but it is utterly incredible that this Witness, living at *Exeter*, next Door to the *Turk's Head*, the supposed Scene of Action, which was kept by *Vicars* and his Family, should never have heard of this Transaction until within Two Months before the last Trial, and then, at the Distance of 8 Years, should perfectly recollect the Time of seeing *Elizabeth Caunter* without Circumstances which might naturally refresh her Memory. It is to be remarked that *Elizabeth Caunter* is admitted by all Parties to have been at *Exeter* on the 4th Day of July in the same Year, which might possibly lead this Woman into some Mistake, concerning her being at *Exeter* in the Summer of that Year.

On the Part of the Appellant, the Alibi of *Josias Salter* was not clearly proved at the former Trial. It was a Fact well known to the Parties in the Cause, that *Josias Salter* came to *Exeter* on the 7th Day of August, in the Year 1766, in order to be tapped for the Dropsy: But it was not till the first Trial that the Respondents absolutely fixed the Time of the pretended Execution of the supposed Will, when *John Melhuish*, the Clerk of the Respondent *Hite*, in Order to give Credit to his Story, affected to ascertain the Time precisely by his assisting at an Arrest made at *Exeter* by the Orders of his Master. This Clue led to a Discovery of the Evidence which has clearly established the Alibi of *Josias Salter*. The Books of *Matthew Andrew Paull* were produced for the Purpose of shewing, that he made no Entries therein of any Money received for the Business supposed to have been done by him relating to the Will in Question. The Result of this new Evidence has clearly added great Strength to the Case of the Appellant, and it is material to be attended to, as it distinguishes the Cases on which the two Verdicts have been given in this Cause, and renders them in Effect reconcilable to each other; and if they could not be considered as reconcilable, would afford a very good Reason for preferring the latter.

But



20 Jan. 1774, Lord Chancellor, upon the Motion of the Respondents Ramsey and Wife, granted a third Trial to be had in Devon.

But notwithstanding the Verdict in favour of the Appellant was so well warranted by the Evidence, yet on the 20th of January 1774, the Respondents *Ramsey and Wife* applied by Motion to the Court of Chancery, that a new Trial of the said Issue might be granted at the Bar of the King's-Bench, when the Lord High Chancellor, after reading the learned Judge's Report, who was not dissatisfied with the Verdict, was pleased to order that upon the said Ramsey and Wife's paying the Appellant the Costs of the last Trial, the Parties should proceed to another Trial of the said Issue at the then next Lent Assizes for the County of Devon.

3 Feb. 1774, Application, by Respondents Ramsey and Wife, to the Court of Chancery for a Trial at the Bar of the Court of King's-Bench.

And on the 8th Day of February 1774, the Respondents *Ramsey and Wife* again applied by Motion to the said Court of Chancery to have the said Order of the said 20th Day of January varied from a Trial at the said Assizes, and to have the Issue tried at the Bar of the Court of King's-Bench; when his Lordship (after hearing the said Order of the 20th Day of January, and an Affidavit of the Appellant read, setting forth that the Estate in Question, which is of or about the yearly Value of 350*l* subject to Reprizes and the Dower of the Widow of the supposed Testator, was the only Property which she possessed or was intitled unto, save a few Household Goods of an inconsiderable Value; and that she having been kept out of Possession of the said Estates, had been obliged to borrow Money for her Support, and without the Assistance of her Friends could not have maintained herself; and that the Expences of the said Suits and Trials at Law had been very great; and that her Witnesses were very numerous; and that in case a Trial at Bar should be directed, the Expences would be so very great, she could not support the same) was pleased to order, that the Trial of the said Issue, directed by the said Order of the 20th Day of January, be had at the Bar of the Court of King's Bench the then next Easter Term, or at such other Time as that Court should appoint, the said Ramsey and Wife, consenting to take Nisi Prius Costs, in case a Verdict should be found in Favour of the Will.

And ordered accordingly,

The Appellant, apprehending herself aggrieved by the said Orders of the 20th Day of January and 8th Day of February 1774, hath appealed therefrom, and hopes that such Orders shall be reversed, and that another Trial will not be granted, for the following (among other)

## R E A S O N S .

- I. The Ballance of Evidence clearly preponderates in favour of the Appellant. The clear and positive Proof, that *Elizabeth Caunter* was at *Crediton* during the Fair Week, and that *Josias Salter* was not present at the *Turk's Head Inn* on the Day of the supposed Execution of the Will; the negative Proof that *Matthew Andrew Paull* never made the Will in Question; the several Declarations of *Elizabeth Caunter*; the internal Evidence of the Will itself; the Indorsement on the Cover, all uniformly concur in demonstrating this Proposition, That the pretended Will was never executed by *Michael Salter Alsbe*, nor drawn by *Matthew Andrew Paull*, nor attested by any of the Persons whose Names are set thereto as subscribing Witnesses.
- II. The only Ground on which it was contended for the Respondent *Jane Ramsey*, that the Will ought to be established, was, that otherwise several Witnesses produced by her must be deemed Guilty of *Perjury*; but it is on the other Hand equally clear, that if the Will is to be established, several Witnesses produced by the Appellant must be deemed Guilty of *Perjury*, as it is impossible on any Supposition to reconcile their Testimony to the Case insisted upon, and attempted to be proved by the Respondents. The positive Testimony of the Witnesses being thus contradictory, no Criterion remains by which the Cause can be rationally determined, but the Circumstances of the Case, and these most wonderfully concur to disprove the pretended Will, and indeed render it impossible to believe this Will to be genuine, without believing Facts to have existed in the present Case, which never before existed in any human Transaction.
- III. The only Reason urged for granting a new Trial was, that as there are now Two opposite Verdicts, one in favour of, the other against, the Will, there is no Foundation for the Court of Chancery to Decree either for or against it. The Answer is, that these Verdicts are founded on different Facts. The Book of Accounts kept by *Paull* was not produced on the first Trial, and the Nonproduction of it was urged with Weight to the Jury on the Behalf of the Respondents. On the second Trial this Book was produced. The *Alibi* of *Josias Salter* was not positively proved on the first, but was so proved on the second Trial, with the greatest Clearness and Precision. The two Verdicts are therefore in effect not contradictory, being the Result of different Evidence; and the Jury who gave the first would probably have given the second, if they had heard the Evidence which was produced on the last Trial. Besides, when the two Verdicts are compared, the last must derive Weight from the very Circumstance of its being the last. When after one Trial, Parties proceed to a second, the Cause is better understood, the Parties are fully acquainted with the Merits of their own Case, and of that of their Adversary, and are better prepared to support the one, and combat the other. In this Case too, the second Verdict has an Advantage from being given by a full *Special Jury*, whereas the first was the Verdict of a Common Jury, with the Assistance of only Three Special Jurors.
- IV. The last Verdict is in itself perfectly satisfactory. No Objection can be made to it, and it concurs with and confirms those Suspicions which your Lordships entertained when you ordered a second Trial. Those Suspicions induced your Lordships to think that the first Verdict was not satisfactory, and that the Cause ought to undergo a second Examination by a Jury. As, upon such a second Examination, a Jury has given a Verdict contrary to the former, to determine that the second Verdict is not a satisfactory Decision of the Question, is, in effect, to say, that the Question never can be satisfactorily decided.

J. MANSFIELD.

J. DUNNING.



HOUSE OF LORDS.

Ann Sater, Spinster, - - - - - Appellant.

Francis Hite, an Attorney at Law, Ed-  
ward Ramsey and Jane his Wife,  
(late Jane Byrdall, Widow) Mary  
Sater, John Partridge the Elder,  
John Partridge the Younger, and  
Samuel Marris, - - - - - Respondents.

Appellant's C A S E.

To be Heard at the Bar of the HOUSE OF LORDS,  
on the Day of 1777.



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